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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Calling Party Pays Service Option	)	WT Docket No. 97-207
In The Commercial Mobile Services	)	
	)	
TO: The Commission	)	

**COMMENTS OF SPRINT SPECTRUM L.P.
d/b/a SPRINT PCS**

JONATHAN M. CHAMBERS
ROGER C. SHERMAN
SPRINT SPECTRUM, L.P.
1801 K Street, N.W., Suite M-112
Washington, D.C. 20006
(202) 835-3617

KURT A. WIMMER
ROBERT A. LONG
NIRANJAN ARASARATNAM*

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 662-6000

Its Attorneys

* *Member of the Bar of New South Wales; Not Admitted in the United States*

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Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint PCS") and its affiliates are the largest holders of personal communications service ("PCS") licenses in the country, with nationwide coverage of more than 260 million potential subscribers and commercial service in more than 130 metropolitan markets to date. Sprint PCS agrees wholeheartedly with the Commission's goal of encouraging competition among wireless and wireline providers.[1/] Regulatory action to implement the calling party pays ("CPP") service option is one of the most important steps the Commission can take to encourage swift development of this competition.

I. THE POTENTIAL BENEFITS OF CPP JUSTIFY FEDERAL REGULATORY ACTION.

A. The Implementation of CPP Will Promote Competition Among Wireless and Wireline Telecommunications Providers.

Telecommunications services can effectively compete with one another when consumers see the potentially competing services as *substitutes*. CPP is a service option that facilitates the substitution of wireless telephony for wireline service.

1/ Calling Party Pays Option in the Commercial Mobile Radio Services, Notice of Inquiry, WT Docket 97-207, FCC 97-341 at 1-2 (Oct. 23, 1997) (the "*NOI*").

SUMMARY

Sprint Spectrum L.P. d/b/a Sprint PCS urges the Commission to craft a national regulatory structure for the calling party pays ("CPP") service option. Effective implementation of CPP will encourage robust competition among wireless companies and wireline incumbents, expand consumer choice, increase the value of the nation's telecommunications infrastructure and encourage efficient spectrum use.

The Commission should implement CPP through its LEC-CMRS interconnection policy. This approach would be consistent with the manner in which CPP has been implemented in Europe and elsewhere, but the Commission should improve upon that model and adapt it to fit within the U.S. regulatory structure. The Commission should take three essential steps to implement CPP through interconnection policy:

1. The Commission should clarify that interconnection between LECs and CMRS carriers is a matter of federal law and policy.

2. The Commission should establish with specificity in its guidelines how this policy will be effectuated in a CPP environment. The Commission should find, for example, that the charges to the LEC customer under a CPP plan should not exceed the CPP interconnection charges incurred by the LEC, plus its incremental charges for billing its customers.

3. The Commission should make clear that it will intervene on an expedited basis if conflicts between a LEC and a wireless carrier prevent the timely implementation of CPP services.

The Commission also should establish consumer protection standards as a national matter to prevent inconsistent state standards from acting as a barrier to effective nationwide implementation of CPP.

Finally, the Commission has ample authority under Section 332 of the Communications Act of 1934 to implement CPP on a national basis through interconnection policy. Rules to implement CPP are "rules of special concern to CMRS providers," within the meaning of the *Iowa Utilities Board* decision, and the Commission can establish these rules as a matter of federal policy.

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In the United States, wireless customers almost always pay for the cost of outgoing *and* incoming calls.[2] Wireline customers, in contrast, almost always pay no additional charge to receive calls. This disparity in pricing contributes to the perception that wireless services are not substitutable for wired services. Until this disparity is reconciled, wireless telephony will be viewed primarily as an ancillary service, and the model of personal connectivity envisioned by the Commission's actions in establishing PCS will not be realized.[3]

At present, there is no direct evidence of CPP's ability to foster competition in the United States. Because the implementation of CPP in the United States has been limited and the ability of wireless carriers to offer CPP is subject to the control of state public utility commissions and the local exchange companies ("LECs") with whom wireless carriers seek to compete, the Commission is correct in looking abroad for compelling evidence about the positive competitive impact of CPP. Most notably, the experience with CPP in Europe demonstrates that such a service offering greatly enhances the ability of subscribers to use wireless telephony services much as they use wireline services. In

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[2] A limited and recent exception to this general policy are carrier-created "first minute free" programs in which the first minute of any incoming call is provided free of charge to the subscriber. These programs attempt to encourage certain consumer behavior that has been noted in CPP environments, but are dissimilar to CPP in that they apply to only a portion of incoming traffic and require the wireless carrier to absorb the cost of the first minute of the call.

[3] *See, e.g.*, Amendment of the Commission's Rules To Establish New Personal Communications Services, Notice of Proposed Rulemaking, 7 F.C.C. Rcd. 5676, 5687-88 (1992); Amendment of the Commission's Rules To Establish New Personal Communications Services, Second Report & Order, 8 F.C.C. Rcd. 7700, 7711 (1993), *on recon.*, 9 F.C.C. Rcd. 4441, *further recon.*, 9 F.C.C. Rcd. 4957, 4960 (1994), *further recon.*, 9 F.C.C. Rcd. 6908 (1994).

some Scandinavian countries offering CPP, for example, wireless penetration exceeds 40 percent.[4] Similar examples abound throughout Europe, the Middle East and Latin America, where CPP is the norm.[5]

International experience with CPP also illustrates that CPP can lead to a more equitable balance of calls coming into and going out from a wireless system. Traffic ratios in the United States have traditionally tilted heavily toward outgoing calls. In countries in Europe and the Middle East where CPP is offered, wireless phone traffic is relatively balanced.[6] Moreover, a 1994 market trial in the U.S. demonstrated that, over

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[4] *See* Price, *European Cellular Market Report*, Financial Times (London), Nov. 19, 1997, at 14 (Norway, Sweden and Denmark have from 27 to 32 percent wireless penetration); *Ex Cathedra: Has HFC Had Its Day?*, Information Access, Nov. 21, 1997, at 10 ("Finland became the first country in the world to achieve a cellular phone penetration rate above 40 percent").

[5] *See World Cellular Population Reaches More than 166 Million at Mid-Year*, Financial Times Business Reports, Oct. 30, 1997, at 2 (Israel penetration rate 28.95 percent); *see also Israel to Build CDMA Network*, Wireless Week, December 8, 1997; *Argentinean Cellular Market Prepares For Explosive Growth*, Gazeta Mercantil Online, April 30, 1997 (number of wireless subscribers expected to "jump from the current total of 700,000 to more than 2 million" upon the implementation of CPP).

[6] Significantly, in areas where CPP was not implemented in Europe, a traffic imbalance similar to that observed in the United States resulted. *See* S. Zehle, *Calling Party Pays Mobile Tariffing: An International View*, at § 4.1 (paper presented at the COFETE Guadalajara Forum, April 1997) (available at http://www.prodata-partners.com/tariff/htm) ("Zehle"). Where CPP is offered in Europe and elsewhere, however, traffic tends to move toward balance. *See* Cellular Telecommunications Industry Association, THE WHO, WHAT AND WHY OF "CALLING PARTY PAYS" at 9 (July 1996) ("CTIA WHITE PAPER"); *see also* Zehle at § 2.1 (in a CPP environment inbound traffic is initially 40 percent, but as numbers are circulated widely, inbound minutes account for nearly 50 percent of incoming traffic).

time, inbound call minutes for subscribers who converted to CPP increased from 26 percent of total minutes to 32 percent within approximately six months.[7]

The implementation of features that empower consumers to control their costs has resulted in traffic moving toward balance in systems operated by Sprint PCS and its affiliates. These features -- first minute free, Caller ID, and integrated voicemail -- in addition to the overall capabilities of an all-digital network (sufficient battery life to allow subscribers to leave a phone on at all times, digital security and fewer dropped calls) have contributed substantially to a balance of traffic on some Sprint PCS systems that is approaching 60/40 or better. CPP, when implemented in the United States, has the potential to eliminate the remaining traffic imbalance, as it has done overseas. The European experience suggests that CPP has great potential to increase competition among wireless and wireline systems by permitting consumers to use both systems in a consistent manner.

B. CPP Will Permit Carriers To Expand Consumer Choice and Respond to Consumer Demand For Greater Control Over Costs.

The effective implementation of CPP will substantially expand consumer choice by permitting subscribers to elect CPP-based or non-CPP-based calling plans. Wireless subscribers who wish to retain a wireless-party-pays plan -- business subscribers, for example -- will be able to retain current plans or obtain "toll-free" wireless numbers.[8]

7/ *See* CTIA WHITE PAPER at 9.

8/ In Europe, for example, subscribers have long had the freedom to choose CPP or non-CPP plans. Further, European countries that only recently have implemented CPP have made a point of adding CPP as an additional consumer choice and preserving non-
(continued...)

Therefore, making CPP available to American consumers, by definition, will expand the choices available to them.

Further, there is substantial consumer demand for wireless calling plans that are structured consistently with wireline calling plans. One industry survey determined that nearly half of surveyed non-subscribers would subscribe to a wireless system if a CPP-based calling plan were available.[9] The success of calling plans associated with PCS in the United States also demonstrates that consumers will quickly accept services that permit them to control the cost of incoming traffic. As described above, Sprint PCS has had great success with its standard calling plan that combines Caller ID, integrated voicemail and the first minute of all incoming calls without charge.[10] Wireless carriers should be empowered to offer services that respond to this clear consumer demand.

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[8](...continued)
CPP plans. *See* CTIA WHITE PAPER at 8-9. As CTIA notes, not all consumers can be expected to want CPP; wireless carriers, which operate in a highly competitive marketplace, can be expected to be responsive to the demands of all sectors of their potential client base. *See id.* at 5.

[9] Similarly, Eurotel Praha, a wireless operator providing mobile telephone services in the Czech Republic, cited its customer satisfaction research as its principal reason for the introduction of its calling party pays billing system option. *Eurotel Introduces Calling Party Pays for Mobile Telephones in Czech Republic*, New Release (March 13, 1996) (available at http://www.ba.com//nr/96/mar/3-13 erot-cpp.htm).

[10] Emerging calling plans that permit consumers to make -- and receive -- calls for as many minutes as they anticipate using also provide consumers with increased ability to control the costs of their wireless telephone service while using it in a manner that could substitute for wireline telephone service.

C. The Availability of CPP Will Increase The Value Of The Wireless Infrastructure To LEC Customers And Increase The Efficiency of Spectrum Use.

The widespread availability of CPP will make the expanding U.S. wireless infrastructure more valuable not only to wireless subscribers but to non-subscribers as well.[11] As noted above, in today's wireless marketplace, subscribers (particularly cellular subscribers) are reluctant to make their telephone numbers available and often do not leave their wireless phones on to receive calls. Under a CPP model, wireless subscribers publicize their telephone numbers, use voice mail extensively *and* leave their phones on to receive calls. This change in behavior will not only benefit wireless subscribers, but fixed network subscribers as well because these customers will gain greater access to wireless subscribers. Implementation of CPP will thus expand the value of the overall telecommunications network to wireless subscribers and non-subscribers alike.

CPP also will benefit the public by permitting valuable spectrum to be used more efficiently. As a scarce resource, spectrum undoubtedly should be used as efficiently as possible.[12] The evidence from abroad demonstrates clearly that minutes of usage escalate when CPP-based calling plans are made available to consumers.[13] This

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[11] CPP-based plans also permit an equitable distribution of resources among LEC and wireless customers because the party originating the call -- and thus obtaining the benefits of the call being completed -- may appropriately be expected to pay for the costs of terminating the call.

[12] The billions of dollars that wireless carriers such as Sprint PCS have paid for PCS spectrum are a concrete testament to the value of the spectrum at issue here.

[13] *See* CTIA WHITE PAPER at 9; Zehle, *supra* n.6, at § 2.1.

substantial increase in the use of wireless systems increases the amount of traffic carried by the spectrum dedicated to these systems. CPP thus encourages a more economic and efficient use of valuable spectrum.

II. THE COMMISSION SHOULD IMPLEMENT CPP THROUGH INTERCONNECTION POLICY.

In the *NOI*, the Commission correctly suggests that competition in the local telephone marketplace would be furthered by an increase in parity of cost structure between wireless and wireline services.[14/] A CPP system can lead to this result, but only if it is implemented in a way that permits wireless carriers and LECs to act as true co-carriers.

As discussed broadly in the *NOI*, CPP is an option by which the party originating the call pays the airtime and other charges associated with the wireless carrier completing the call.[15/] The implementation of this expansive definition of CPP allows for at least two distinct approaches. *First*, as described in detail in the *NOI*, CPP can be implemented in a manner that treats the wireless carrier similarly to an interexchange carrier or 900-number service provider -- the wireless carrier provides a service (call completion) that is billed to the LEC customer under a casual billing arrangement. *Second*, as the *NOI* also points out, CPP can be implemented through existing

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14/ *See NOI* at 5-6.

15/ *See id.* at 2, ¶ 3.

interconnection agreements.[16] This latter method is similar to the way in which CPP has been implemented in Europe and elsewhere.

A. European Countries Have Successfully Adopted The Interconnection Model For Implementing CPP.

Most European countries have adopted an interconnection-based policy as a means of implementing a CPP system. Under these systems, when a call is made from a LEC wireline phone to a wireless phone, the calling subscriber is billed by the LEC according to published rates for fixed-to-mobile calls. The LEC operator is (1) solely entitled to the subscriber's account and (2) solely responsible for the subscriber's bad debt.[17] In order to provide the service, the LEC must interconnect its network to a wireless carrier's network so that the wireless carrier can terminate the call. The LEC pays an interconnection charge for this service, payment for which is not contingent upon satisfaction of the subscriber's account to the LEC. The interconnection rates are either determined by regulators or negotiated bilaterally by the network within a framework set by the regulator.[18]

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[16] *See id.* at 5, ¶ 9 ("[t]o the extent that CPP is offered in a manner that requires the incumbent LEC to pay carrier-to-carrier airtime charges to complete a call, CPP and reciprocal compensation may address a similar issue (*i.e.*, how the CMRS provider recovers the cost of completing a call that did not originate on the CMRS network)").

[17] *See* Zehle, *supra* n.6, at § 2.1; *see also India: Fixed-To-Cellular Call Tariff Hike Flayed*, Reuter Textline, Business Standard, Feb. 15, 1997 (describing regulatory action concerning CPP rate) ("*India Fixed-To-Cellular*").

[18] *See* Zehle, *supra* n.6, at § 1.3. Interconnection arrangements between wireless carriers and LECs generally come about through negotiation between the parties with implicit or explicit intervention from an independent regulator. For example, in the United Kingdom the interconnection rates payable from British Telecom to the mobile operators Vodafone and Cellnet have been negotiated by the operators without the

(continued...)

B. The Commission Should Implement CPP by Establishing National Guidelines For Expanding Existing Interconnection Agreements To Cover CPP.

CPP can be most effectively implemented in the United States if the Commission structures its rules similarly to the model that has been uniformly successful throughout Europe and elsewhere. As noted above, under the European model, CPP charges generally are handled within the context of interconnection agreements negotiated between the LEC and the wireless carrier. Importantly, however, the national regulatory authority either prefaces interconnection arrangements by establishing a framework for negotiation or stands ready to step in to resolve disputes and set appropriate tariffs.

Federal regulatory guidelines will be necessary in this country as well and will, in fact, permit the Commission to improve upon the European model and adapt it to fit within the U.S. regulatory and legal model. Such guidelines will prevent LECs from using their dominance of the telecommunications marketplace and power in interconnection negotiations to restrict wireless companies' ability to offer CPP services. It is important that these guidelines be established by the Commission and not by a patchwork quilt of state regulatory authorities. As is discussed in more detail below, a comprehensive approach will permit the effective implementation of CPP nationwide.

Sprint PCS believes the Commission should take the following three steps to implement CPP:

[18/](...continued)
intervention of the regulator. The interconnection rates between Mercury and the wireless operators Vodafone and Cellnet have been determined by the regulator following a request by Mercury.

First, the Commission should clarify that interconnection between LECs and commercial mobile radio service ("CMRS") carriers is a matter of federal law and policy. Pursuant to Section 332(c)(1)(B) of the Communications Act of 1934 (the "Act") and as affirmed by the Eighth Circuit Court of Appeals, the Commission has full authority "to issue rules of special concern to CMRS providers."[19] As recognized by the Commission and the court, these rules include the crucially important matter of interconnection.

Second, the Commission should establish with specificity in its guidelines how this policy will be effectuated in a CPP environment. The Commission should find, for example, that the charges to the LEC customer under a CPP plan should not exceed the CPP interconnection charges incurred by the LEC, plus its incremental charges for billing its customers. The LEC must not be permitted to charge its customers a premium above its costs for terminating calls to a wireless carrier; such a premium would defeat the purpose of implementing CPP and further exacerbate the competitive disparity in price structure between wireless and wireline carriers.[20]

Third, the Commission should make clear that it will intervene on an expedited basis if conflicts between a LEC and a wireless carrier prevent the timely implementation

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[19] *Iowa Util. Bd.* v. *Federal Communications Comm'n*, 120 F.3d 753, 800 n.21 (8th Cir. 1997).

[20] *See India Fixed-To-Cellular*, *supra* n.17, at 1 (proposed 22-fold increase in CPP rate to benefit LEC criticized as anticompetitive by Indian wireless carriers); *see also* Oftel, *Prices of Calls to Mobile Phones*, § 6.2 (available at http://www.oftel.yor.uk/pricing/call2mob.htm) (expressing concern about the difference between BT's retail price and the interconnection charges it pays to mobile carriers).

of CPP services. Sprint PCS prefers negotiated agreements between CMRS providers and LECs. Given the history of interconnection negotiations, however, we expect further conflict. Therefore, the Commission should establish specific procedures under which it can resolve individual disputes between CMRS providers and LECs.[21]

C. The Commission Should Establish Consumer Protection Standards As A National Matter.

The primary consumer protection issue that exists in connection with CPP is ensuring that the caller understands that he or she will bear charges for the completion of the call. It is important that the Commission resolve this issue as a national matter to prevent the imposition of an array of inconsistent and varying state requirements.

There are three major mechanisms by which consumers may be notified that they will incur charges upon completion of a CPP call. First, a *recorded message* may be provided to all callers to CPP subscribers (provided that the LEC has sufficient advanced intelligent network ("AIN") technology to permit such call interception. Second, a *distinctive tone* may be provided to wireline callers; this tone may be similar to the identifying tone typically provided by long-distance carriers when credit-card or collect calls are placed. Third, a *one-plus* requirement or a *separate prefix* can be imposed under which a LEC subscriber must dial "one" or a specific prefix before all calls to CPP

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[21] The Commission could model its procedures, for example, on the Section 252 timetables in the Telecommunications Act of 1996.

subscribers; the act of dialing "one" or the prefix is associated with toll calling and sufficiently notifies consumers that charges will result from the call.[22]

The record in this proceeding should permit the industry and the Commission to focus on which of these options will be most effective. The approach that ultimately is followed, however, must be determined by the Commission as a federal matter to prevent inconsistent results across the country.

III. THE COMMISSION HAS AUTHORITY TO IMPLEMENT CPP UNDER AN INTERCONNECTION FRAMEWORK PURSUANT TO SECTION 332(C)(1)(b).

The Commission's Rules already require that LEC-CMRS interconnection agreements be made on a reciprocal and symmetrical basis.[23] Section 332(c)(1)(b) of the Act provides that "[u]pon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connection with such service pursuant to the provisions of section 201 of this Title." Section 201, in turn, provides that "[a]ll charges, practices, classifications, and regulations

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[22] In most European countries, mobile phone numbers are recognizable by their prefix. The regulator issues particular blocks of prefixes and numbers to wireless operators. These prefixes become in effect the access code for the wireless networks, in the same manner as a long distance prefix might be the access code for a long distance network directing calls to a particular city. This practice has caused consumer confusion. In Italy, for example, each of the two mobile networks have up to three different prefixes, each with very different per-minute rates. The prefixes are allocated to mobiles depending upon which tariff the mobile customer is under. *See* Zehle, *supra* n.6, at § 1.2.

[23] *See, e.g.*, 47 C.F.R. § 20.11 (1996); Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, 11 F.C.C. Rcd. 5020 (1996); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report & Order, FCC 96-325, slip op. at 480, ¶ 1008 (CC Docket 96-98, Aug. 8, 1996) ("*Local Competition Order*").

for and in connection with . . . communications service shall be just and reasonable." 47 U.S.C. § 201. Section 332(c)(1)(B) thus authorizes the Commission not merely to order LECs to interconnect with CMRS carriers, but to do so on terms that are just and reasonable.

In *Iowa Utilities Board* v. *Federal Communications Commission*, 120 F.3d 753 (8th Cir. 1997), *petition for cert. filed* (U.S. Nov. 19, 1997), the court of appeals held that "the Commission has the authority to issue the rules of special concern to CMRS providers." *Id.* at 800 n.21 (upholding all six specific regulatory provisions identified by CMRS providers, "but only as those provisions apply to CMRS providers.") The court's holding recognizes that Congress has granted the Commission clear statutory authority to regulate CMRS-LEC interconnection and other similar incidents of CMRS service. This holding clarifies that Section 332 of the Act, 47 U.S.C. § 332, provides the Commission with authority to establish a nationwide CPP policy.

Section 332 "establish[es] a Federal regulatory framework to govern the offering of all commercial mobile services."[24/] The Commission's authority to regulate CMRS service offerings (and preempt inconsistent state efforts to regulate CMRS service offerings) must be read in light of the Commission's "comprehensive mandate to

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[24/] H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 490 (1993).

'encourage the larger and more effective use of radio in the public interest,'"[25] and its "broad discretion in determining how that goal could best be achieved."[26]

In adopting a statutory framework for fostering the growth of CMRS, Congress directed the Commission to establish "uniform rules" for CMRS services generally.[27] Congress found that "because commercial mobile services require a Federal license and the Federal Government is attempting to promote competition for such services, and because . . . State regulation can be a barrier to the development of competition in this market, uniform national policy is necessary and in the public interest."[28] It is difficult to imagine a more direct statement of congressional policy favoring the establishment of a national plan for policies such as CPP.

Congress made it clear that the Commission, rather than the states, is authorized to develop regulations for CMRS service offerings. Section 332(c)(3)(A) expressly *preempts* state authority to regulate CMRS entry and rates:

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[25] *National Broadcasting Co.* v. *FCC*, 319 U.S. 190, 219 (1943), *quoting* 47 U.S.C. § 303(g). *See also* M. Kellogg, *et al.*, FEDERAL TELECOMMUNICATIONS LAW § 13.2, at 645 (1992) (noting that the Commission has plenary authority over radio under 47 U.S.C. § 301).

[26] *Federal Communications Comm'n* v. *WNCN Listeners Guild*, 450 U.S. 582, 594 (1981); *see Implementation of Section 332, Second Report and Order*, 9 F.C.C. Rcd. 1411, 1506 (1994). *See also United States* v. *Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (noting that the Commission may undertake any regulation "reasonably ancillary to the effective performance of the Commission's various responsibilities").

[27] H.R. Rep. No. 111 at 259, 261.

[28] H.R. Conf. Rep. No. 213 at 481 (incorporating by reference finding in Section 402 of Senate bill).

> Notwithstanding sections 152(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . ., except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.

As the Commission explained in implementing this section, "Congress . . . intended generally to preempt state and local rate and entry regulation of all commercial mobile radio services to ensure that similar services are accorded similar regulatory treatment and to avoid undue regulatory burdens."[29/] Under ordinary principles of statutory interpretation, the express *preemption* provision in Section 332(c)(3)(A) does not limit the express *grant* of authority to the Commission in Section 332(c)(1)(B).[30/] Where the Commission exercises its authority under Section 332(c)(1)(B) to order CMRS-LEC interconnection on just and reasonable terms, the Commission's regulations supersede inconsistent state regulations. *See, e.g.*, *City of New York v. FCC*, 486 U.S. 57, 63-64 (1988) (federal regulations promulgated pursuant to authority delegated by Congress may expressly or implicitly preempt state law); *Fidelity Federal Savings & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 153-54 (1982) (same).[31/]

29/ *Implementation of Section 332*, 9 F.C.C. Rcd. at 1504.

30/ That conclusion follows not only from standard principles of statutory interpretation, but also from the amendment to Section 2(b), which applies to *all* of Section 332, not only to Section 332(c)(3)(A). *See* 47 U.S.C. § 152(b).

31/ The Telecommunications Act of 1996 (the "1996 Act") did not limit the Commission's authority to regulate CMRS-LEC interconnection under 47 U.S.C. § 332. Section 601(c)(1) of the 1996 Act states that "[t]his Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided." In addition, Section 251(i) expressly provides that "[n]othing in this section shall be construed to limit or otherwise affect the Commission's authority under Section 201." And Section 253(e) provides that "[n]othing in this section shall affect the application of section 332(c)(3) to commercial mobile providers."

Thus, Section 332(c)(3)(A) establishes that the Commission, and not the states, should regulate CMRS service offerings. As to rates charged *by* CMRS providers, Section 332(c)(3)(A) directly divests the states of "any authority to regulate," leaving the Commission as the only entity with regulatory authority. It is only sensible that the Commission should establish an overarching federal policy for CPP. "Congress intended [Section 332] to establish a national regulatory policy for CMRS, not a policy that is balkanized state-by-state."[32]

The scattered experience the wireless industry has had attempting to offer CPP-based services in the United States has demonstrated graphically the need for a national policy to facilitate CPP. Attempts by carriers to offer CPP have led to differing and inconsistent state regulations; the only common elements in the state regulatory approaches to carrier requests to offer CPP have been delay in considering requests to offer CPP and an adverse view toward it. As just four examples:

- The Arizona Corporation Commission claimed that a plan to offer CPP services was an attempt "for cellular providers to impose external costs on non-cellular subscribers through abuse of monopoly power."[33]

- The California Public Utility Commission authorized a "limited market trial" of CPP only after seven years of regulatory deliberation. Even when it authorized CPP after this delay, it imposed onerous conditions on its offering -- including a

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[32] *Hawaii PUC*, 10 F.C.C. Rcd. 7872, 7875 (1995).

[33] *See* U S West NewVector Opposition, Implementation of Sections 3(n) and 332(c) of the Communications Act, PR Docket 94-104, filed Sept. 19, 1994, at 16, *quoted in* CTIA WHITE PAPER at 18 & 18 n.67.

lengthy and highly detailed message to all callers to wireless subscribers on CPP plans.[34]

- The Montana Public Service Commission required a year-long hearing to approve a request by a wireless carrier to offer CPP, after hearing consumer authorities argue that "CPP was a noncompetitive, discriminatory billing practice that shifts unregulated charges for cellular airtime onto unwitting U S West local wireline customers."[35]

- The Hawaii Public Utilities Commission required a wireless carrier to file a tariff for CPP and imposed a 19-month delay on initiation of the service.[36]

Given its regulatory history before the state commissions, it is not surprising that CPP services have only been offered in small, isolated tests in the United States. This pattern of delay provides graphic evidence of the need for a uniform national policy to facilitate the offering of competitive CPP services by wireless carriers.

This national policy is needed for several reasons:

First, CPP cannot be effectively implemented on a nationwide basis without a national policy on how it may be offered by federally licensed wireless carriers.

Second, only a single, nationwide policy can avoid a panoply of inconsistent state regulations that will prevent CPP from widespread use. Inconsistent and varying state regulations constitute a *de facto* barrier to entry into CPP service offerings.

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[34] *See* Investigation on the Commission's Own Motion into the Regulation of Cellular Radiotelephone Utilities and Related Matters, 115 P.U.R.4th 561 (Cal. Pub. Util. Comm'n, 1990).

[35] "Caller-Pays Cellular Okayed," *State Telephone Regulation Report* (Nov. 30, 1995), *quoted in* CTIA WHITE PAPER at 19 & 19 n.72.

[36] *See* CTIA WHITE PAPER at 15, 19.

Third, a national CPP policy will promote widespread consumer recognition of CPP as a valid method of payment for calls to wireless subscribers; without this nationwide recognition, the potential for CPP as a competitive force will be difficult to realize. National standards for consumer protection also will be more effective than inconsistent state regulations because wireless subscribers move frequently over state lines and because uniform national standards will be more quickly internalized by consumers across the country.

Fourth, only a national policy can promote effective use of CPP by wireless carriers, which are inherently multistate.[37] Many wireless licensing areas -- both major trading areas and basic trading areas -- operate in more than one state; moreover, the Commission and Congress have recognized that all wireless carriers provide services that can only be characterized as multistate because "mobile services . . ., by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[38]

Finally, only a uniform national policy can permit federally licensed wireless carriers to offer CPP services without undertaking lengthy and expensive regulatory proceedings in more than fifty separate jurisdictions. For these reasons, and because of

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[37] For example, Sprint PCS operates all its systems on a multistate basis in furtherance of its construction of an integrated national PCS system. Its switches are routinely across state lines from portions of its wireless system; it operates national customer care from one central location; and it uses consolidated HLR/VLR databases.

[38] H.R. Rep. No. 111, p. 260.

Section 332's clear grant of regulatory authority to the Commission, the Commission should adopt a national policy fostering the offering of CPP.

The Commission's *dictum* in the *Arizona* case does not require any contrary finding.[39] In *Arizona* -- which, importantly, predated the Eighth Circuit's decision in *Iowa Utilities Board* -- the Commission listed "'calling party pays' customer billing" as an example of "other terms and conditions" of service and found that the Arizona commission "retains authority to regulate such practices."[40] This statement, which was not necessary to the outcome of the *Arizona* case, was used by the Commission only as an example of a service that could, as of 1995, reasonably be considered to be a matter of state regulatory concern. After the Commission's *Local Competition Order* and the *Iowa Utilities Board* decision, however, it now is clear that the Commission has sole authority to regulate matters of "special concern" to CMRS providers. The Commission should exercise this authority to formulate a national CPP policy.

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[39] *See* Petition of Arizona Corporation Commission to Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services, 10 F.C.C. Rcd. 7824 (1995) ("*Arizona*").

[40] *Id.* at 7837.

CONCLUSION

For the foregoing reasons, the Commission should take concrete and swift action to implement CPP based on the European model through interconnection policy.

Respectfully submitted,

SPRINT SPECTRUM L.P.
d/b/a SPRINT PCS

KURT A. WIMMER
ROBERT A. LONG
NIRANJAN ARASARATNAM*

COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 662-6000

Its Attorneys

JONATHAN M. CHAMBERS
ROGER C. SHERMAN
SPRINT SPECTRUM, L.P.
1801 K Street, N.W., Suite M-112
Washington, D.C. 20006
(202) 835-3617

* *Member of the Bar of New South Wales; Not Admitted in the United States*

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